SATELLITE 8309220

IBLA 84-864 Decided May 30, 1985

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring simultaneous oil and gas lease application NM-A 058842 unacceptable.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

An automated simultaneous oil and gas lease application Part B, form 3112-6a, which is unsigned is properly found to be unacceptable.

APPEARANCES: Donna M. Brady, Esq., Mineola, New York, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Satellite 8309220 has appealed from a July 26, 1984, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring simultaneous oil and gas lease application NM-A 58842 unacceptable.

Appellant's application was drawn number one for parcel NM 283 in the April 1984 drawing. BLM found the application (Part B, form 3112-6a) to be unacceptable because it was unsigned. BLM stated, citing Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984), that it would retain a $75 processing fee and return the balance of the filing fees to appellant.

On appeal counsel for appellant charges that the omission of a signature was inadvertent and is not a proper ground for BLM's action, citing Conway v. Watt, 717 F.2d 512 (10th Cir. 1983). Counsel argues that the lack of a signature, like the lack of a date in Conway, is a de minimis, nonsubstantive error.

[1] Counsel's argument must be rejected. The regulations at 43 CFR 3102.4 provide in part:

> All applications, the original of offers, competitive bids, assignments and requests for approval of an assignment shall be holographically (manually) signed in ink and dated by the present or potential lessee or by anyone authorized to sign on behalf of

> the present or potential lessee, except that applications filed under Subpart 3112 of this title shall not be deemed unacceptable for the failure to be dated.

The exception relating to the date on the application was added by final rulemaking on June 29, 1984, 49 FR 26920. The proposed rulemaking made it clear that the change was being made to conform the regulations to "court decisions that have held that while the Secretary of the Interior can require a signature date, he cannot make its absence a per se disqualification." 49 FR 9753 (Mar. 15, 1984). The requirement for a signature was not changed.

In Carey D. McDaniel, 80 IBLA 393, 394 (1984), the Board stated the rationale for requiring a signature as follows:

> The Department has consistently required a signature on the application form used in simultaneous oil and gas lease drawings, and has uniformly enforced that requirement. Similarly, appellant's argument that the Secretary may not reasonably require a signature is without merit. The Board has frequently held the signature is the applicant's (or offeror's) certification of all other statements made on the face of the application (or offer), and is essential to the Department's ability to police the system as only the signature brings into play the provisions of 18 U.S.C. § 1001 (1982). When an applicant fails to sign the application, he has also failed to certify to his qualifications to hold an oil and gas lease. And, because he has failed to do so, his application cannot be accepted. Thomas Buckman, 23 IBLA 21 (1975).

In addition, in Satellite 8305136, 85 IBLA 190-92 (1985), the Board discussed the Conway case, stating:

> It is important, however, to recognize that the Conway court did not hold that the Secretary could not establish per se rules. On the contrary, the court clearly held that the requirement that the DEC [drawing entry card] or application form be signed within the filing period was properly enforced against all applicants as a substantive rule. [Emphasis in original.]

After quoting from the Conway case, the Board concluded:

> Thus, the Conway court explicitly held that the failure to sign within the filing period was a fatal defect, while the failure to supply a date that would show this fact was not necessarily a disqualifying omission.

In a recent decision, KVK Partnership v. Hodel, No. 84-1256 (10th Cir. Apr. 19, 1985), the U.S. Court of Appeals for the Tenth Circuit explained its Conway decision as follows: "[W]e did not hold that the agency may never adopt per se requirements. Read in light of its facts, Conway holds only that a BLM regulation may not be per se grounds for disqualification if it

does not further a statutory purpose." The signature requirement furthers a statutory purpose. BLM properly found appellant's application to be unacceptable. See Shaw Resources, Inc., supra at 177 n.10, 91 I.D. at 136 n.10.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Will A. Irwin
Administrative Judge